

REMARKS

The Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow.

Status

Claims 1-3 had been withdrawn, and Claim 6 cancelled without prejudice to further prosecution on the merits.

Claims 4, 5, and 7-14 were pending.

Claim 4 is currently being amended.

After amending the claims as set forth above, Claims 4, 5, and 7-14 are now pending in this Application.

The Applicants believe that the present Application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

On page 2 of the Office Action, the Examiner rejected Claims 4, 5, and 7-12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,009,791 (“Kraan”). (The Applicant notes that Kraan is assigned to the same company as the present Application.)

The Examiner stated that Kraan discloses:

A holder 4 for supporting a coffee cartridge, the holder having an inlet 24 and outlet 20, the outlet forming a nozzle 22; a hot water means 38, 40, 42 for supplying hot water under pressure; a first buffer reservoir 28 have a first outflow path 30; a second buffer reservoir 25 having a second outflow path 26, the second buffer reservoir forming an impact surface (bottom of housing 32) positioned relative to the first buffer reservoir; wherein, if desired, the first buffer reservoir can be removed from the second reservoir.

In regards to the first buffer reservoir being removable, it is apparent that the buffer reservoir of Kraan could be removed by some means if so desired.

In regards to the presence of creamer within the first buffer reservoir, such is a desired used and provides no structural limitations to the claims.

Claim 4 (as amended) is in independent form and recites an “apparatus for the preparation of a cappuccino” comprising, in combination with other elements, a “first buffer reservoir . . . being positioned relative to the at least one nozzle such that the coffee extract jet spouts into the first buffer reservoir . . .” and an “impact surface positioned relative to the first buffer reservoir such that the cappuccino flowing from the buffer reservoir impacts onto the impact surface before leaving the apparatus” wherein “the first buffer reservoir is removable from, and replaceable in, the apparatus as a separate unit.” Claims 5 and 7-12 depend from independent Claim 4.

Kraan is directed to an apparatus 1 for preparing coffee. The apparatus 1 includes a housing 2 and a cup-shaped holder 4. The holder is detachably placed on the housing 2 and is configured to receive a pouch 6 of ground coffee (for example). The housing also includes a liquid receiving space 25. A cup-shaped collecting reservoir 28 is located in the liquid receiving space 25. During operation, hot water passes through pouch 6 and collects as coffee extract in the recess. The coffee extract then sprouts through a sprout opening 22 into the collecting reservoir 28. As the coffee sprouts into the surface of the liquid filling the collecting reservoir 28, a café crème is formed.

Kraan does not identically disclose an “apparatus for the preparation of a cappuccino” comprising, among other elements, a “first buffer reservoir . . . being positioned

relative to the at least one nozzle such that the coffee extract jet spouts into the first buffer reservoir . . ." and an "impact surface positioned relative to the first buffer reservoir such that the cappuccino flowing from the buffer reservoir impacts onto the impact surface before leaving the apparatus" wherein "the first buffer reservoir is removable from, and replaceable in, the apparatus as a separate unit" as recited in independent Claim 4 (as amended). In Kraan, the holder 4 is removable, not the collecting reservoir 28. To remove the reservoir 28 in Kraan would require damage and destruction of the collecting reservoir 28 and the cup shaped element 32. See, for comparison, V-Formation, Inc. v. Benetton Group SpA, 401 F3d 1307, 1311-12 ("releasably attaching" construed to "mean that fasteners 'must permit the sidewalls to be easily removed and replaced' and determining that 'those skilled in the art would not consider rivets . . . to fall within the category of releasable fasteners.'"); K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1363-65 ("Screws, unlike rivets and laminates, are meant to be unscrewed, that it, to be removed. A rivet or a laminate, to the contrary, is meant to remain permanent, unremoveable unless one is bent on breaking the permanent structure apart."). Accordingly, "removable" does not encompass breaking the structure apart *by some means if so desired*. The rejection of Claim 4 (as amended) over Kraan is not proper. Claim 4 is patentable over Kraan.

Dependent Claims 5 and 7-12, which depend from independent Claim 4, are also patentable. See 35 U.S.C. § 112 ¶ 4.

The Applicants respectfully request withdrawal of the rejection of Claims 4, 5, and 7-12 under 35 U.S.C. § 102(b)

Dependent Claims 5 and 7-12, which depend from independent Claim 4, are also patentable. See 35 U.S.C. § 112 ¶ 4.

The Applicant respectfully request withdrawal of the rejection of Claims 4, 5, and 7-12 under 35 U.S.C. § 103(a).

The Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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